

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs April 25, 2006

**STATE OF TENNESSEE v. MARK ANTHONY HILL**

**Appeal from the Criminal Court for Hamilton County**  
**No. 245851 Rebecca J. Stern, Judge**

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**No. E2005-01550-CCA-R3-CD - Filed June 9, 2006**

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The appellant, Mark Anthony Hill, was convicted by a Hamilton County jury of robbery. He was sentenced to fifteen years as a career offender. After the denial of a motion for new trial, this appeal followed. On appeal, the following issues are presented for our review: (1) whether the evidence was sufficient to support the conviction; (2) whether the trial court erred by allowing a police officer to testify regarding the victim's identification of the appellant from a photo lineup; and (3) whether the trial court erred in refusing to grant a judgment of acquittal on the robbery charge. For the following reasons, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3; Judgment of the Circuit Court is Affirmed**

JERRY L. SMITH, J., delivered the opinion of the court, in which THOMAS T. WOODALL and JAMES CURWOOD WITT, JR., JJ., joined.

Jerry S. Sloan, Chattanooga, Tennessee, for the appellant, Mark Anthony Hill.

Paul G. Summers, Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; William H. Cox, III, District Attorney General; and Mark Sullivan Moore and Boyd Patterson, Assistant District Attorneys General, for the Appellee, State of Tennessee.

**OPINION**

**Factual Background**

According to ninety-year-old<sup>1</sup> victim Robert Wood, on July 17, 2003, he and his wife Mildred Hatcher drove to the SunTrust Bank on Highway 58 in Chattanooga, Tennessee, to withdraw \$1,000 cash to pay for repairs to their vehicle. As they walked out of the bank, the appellant approached them and asked for a ride. The appellant claimed that his vehicle was broken

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<sup>1</sup> At the time of the incident, the victim was eighty-nine years old.

down. Mr. Wood and his wife gave the appellant a ride and let him out at a residence on Bonny Oakes Drive. The appellant indicated that he was going to pay the victims for the ride and also claimed that a woman inside the residence on Bonny Oakes Drive knew Mrs. Hatcher and wanted to see her.

Mrs. Hatcher exited the vehicle, and the appellant helped Mr. Wood back his vehicle into the driveway of the residence. As Mr. Wood got out of the car, the appellant slammed the door against Mr. Wood's leg and jerked him out of the car, knocking him down a hill. Mr. Wood got up in time to see the appellant take the keys to the vehicle and Mr. Wood's wallet out of the vehicle. The appellant ran down the street.

Mr. Wood knocked on Mike Frazier's door at 3970 Bryant Street, which uses the same driveway as the residence at 4100 Bonny Oakes Drive, and asked to use the telephone to call the police. According to Mr. Frazier, Mr. Wood appeared slightly disoriented and was limping. Mr. Frazier walked outside, saw the vehicle in the driveway and noticed that Mr. Wood's wife was sitting in the passenger side of the vehicle. Mr. Frazier called the police.

Officer Jack Horner of the Chattanooga Police Department responded to the call at 4100 Bonny Oakes Drive and spoke with Mr. Wood. Officer Horner contacted Detective Mike Early and asked him to begin a robbery investigation. Through their efforts, the officers learned that \$1,000 was taken from the victims during the robbery. The officers were able to verify the bank transaction in which the victims withdrew the money, but they were unable to obtain video surveillance from the bank. On the day after the robbery, Mr. Wood was able to identify the appellant in a photo lineup. The appellant was picked up for questioning two days after the robbery.

The appellant was read his Miranda rights and elected to sign a waiver. At first, the appellant denied being at SunTrust bank. However, after being told that there was video surveillance at the bank, the appellant changed his story. The appellant claimed that he wanted a ride to a bar on Highway 58 where he planned to meet a man named James Taylor, who lived in Harrison, Tennessee. The police were unable to locate Mr. Taylor.

In August of 2003, the Hamilton County Grand Jury indicted the appellant for robbery. At a jury trial in June of 2004, the appellant took the stand in his own defense. The appellant claimed that he was at the SunTrust bank at the time of the offense because a friend called and asked him to meet him there. The appellant disputed the officers' claims that he initially denied being at the bank. The appellant testified that there was a fourth person in the vehicle when Mr. Wood and his wife gave him a ride. The appellant claimed that the fourth person's name was "Joe or something." The appellant stated that he asked the victims to give him a ride to United Groceries, not a bar, and that he attempted to give the victims ten dollars for their trouble. However, the appellant testified that Mrs. Hatcher told him to give the money to the fourth person in the car. The appellant claimed that he did not see the victims again after they dropped him off at United Groceries.

The appellant admitted that he waived his rights and gave a statement to the police because he had nothing to hide. He admitted that he had an extensive past record, including, among other

things, drug use, two burglary convictions, five theft convictions and two aggravated burglary convictions.

On cross-examination, the appellant claimed that he was an employee of Brock Candy Company and former employee of United Groceries at the time of the incident. He admitted that he was released on parole in 2002. The appellant admitted prior convictions but claimed that he had never hurt anyone in the process. When questioned, however, the appellant admitted that he had a prior conviction for robbery, which is a crime of violence. Additionally, the appellant admitted to convictions for grand larceny from a person in 1979, twelve counts of burglary in 1981, armed robbery, burglary, theft, larceny, receiving stolen property, and DUI.

The appellant testified that he spent the night before the robbery at his aunt's house because he and his wife had a fight.

The appellant's wife, Danita Hill, was called as a rebuttal witness. She testified that the appellant did not have a vehicle at the time of the incident and verified that the appellant did not spend the night at the residence between July 16 and 18 because of a marital dispute. Ms. Hill claimed that she did not know any of the appellant's friends. Ms. Hill stated that the appellant usually got around town by riding with friends or borrowing her truck.

At the conclusion of the proof, the jury found the appellant guilty of robbery. Subsequently, after a sentencing hearing, the trial court sentenced the appellant to fifteen years as a career offender. The appellant filed a timely motion for new trial that was denied by the trial court after a hearing. On appeal, the appellant argues that the evidence is insufficient to support his conviction, the trial court erred by not granting a judgment of acquittal on the robbery charge and submitting the case to the jury on the lesser-included offense of theft, and that the trial court erred in allowing Detective Early to testify that the victim identified the appellant at a photo lineup.

### Analysis

#### Photographic Lineup Testimony

The appellant first contends that the trial court erred by allowing Detective Mike Early to testify that Mr. Wood positively identified the appellant from a photographic lineup the day after the robbery. The State disagrees.

The testimony complained of consisted of statements by the detective that Mr. Wood had been shown a photographic lineup the day after the incident. The detective testified that Mr. Wood identified the appellant after looking at the photographs. Although this testimony is hearsay, we believe it to be an exception under Rule 803(1.1) of the Tennessee Rules of Evidence. This section provides an exception to the hearsay rule for "[a] statement of identification of a person made after perceiving the person if the declarant testifies at the trial or hearing and is subject to cross-

examination concerning the statement.” The Advisory Commission Comments to this rule state the following:

Tennessee recognizes declarations of eye-witness identification as an exception to hearsay exclusion, and the rule generally follows Tennessee precedent. Note that the declarant must also be a witness, affording at least delayed cross-examination as to the extrajudicial statement. Note also, however, that witnesses other than the declarant may testify about the identifying declaration.

At trial, prior to Detective Early’s testimony, ninety-year-old Mr. Wood testified that he could not actually remember the police showing him the photo lineup, but was able to identify the appellant at trial as the Man that took [his] wallet and keys.” During cross-examination, Mr. Wood was able to point to the appellant’s photograph in the lineup.

We conclude that the testimony of Detective Early is permitted under Tennessee Rule of Evidence 803(1.1) which allows under these circumstances for “witnesses other than the declarant” to testify about an identification. Thus, the trial court did not err in admitting the testimony.

#### Denial of Motion for Judgment of Acquittal and Sufficiency of the Evidence

Next, the appellant argues that the trial court erred in denying a motion for judgment of acquittal on the robbery charge and that the evidence is insufficient to support his conviction. Specifically, the appellant argues that the trial court should have granted the motion for judgment of acquittal as to the robbery charge and submitted the case to the jury on the lesser-included offense of theft. Additionally, the appellant argues that “serious questions arise [as to the sufficiency of the evidence] because of the blatant inconsistencies in Mr. Wood’s testimony regarding his ability to accurately relate the events of the alleged robbery.” The State argues that the evidence was sufficient to support the conviction.

According to Tennessee Rule of Criminal Procedure 29(a):

The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses.

This Court has noted that “[i]n dealing with a motion for judgment of acquittal, unlike a motion for new trial, the trial judge is concerned only with the legal sufficiency of the evidence and not with the weight of the evidence.” State v. Hall, 656 S.W.2d 60, 61 (Tenn. Crim. App. 1983). The standard for reviewing the denial or grant of a motion for judgment of acquittal is analogous to the standard employed when reviewing the sufficiency of the convicting evidence after a conviction has been imposed. State v. Ball, 973 S.W.2d 288, 292(Tenn. Crim. App. 1998); State v. Adams, 916 S.W.2d 471, 473 (Tenn. Crim. App. 1995).

When a defendant challenges the sufficiency of the evidence, this Court is obliged to review that claim according to certain well-settled principles. A verdict of guilty, rendered by a jury and “approved by the trial judge, accredits the testimony of the” State’s witnesses and resolves all conflicts in the testimony in favor of the state. State v. Cazes, 875 S.W.2d 253, 259 (Tenn. 1994); State v. Harris, 839 S.W.2d 54, 75 (Tenn. 1992). Thus, although the accused is originally cloaked with a presumption of innocence, the jury verdict of guilty removes this presumption “and replaces it with one of guilt.” State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). Hence, on appeal, the burden of proof rests with the defendant to demonstrate the insufficiency of the convicting evidence. Id. The relevant question the reviewing court must answer is whether any rational trier of fact could have found the accused guilty of every element of the offense beyond a reasonable doubt. See Tenn. R. App. P. 13(e); Harris, 839 S.W.2d at 75. In making this decision, we are to accord the State “the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom.” See Tuggle, 639 S.W.2d at 914. As such, this Court is precluded from reweighing or reconsidering the evidence when evaluating the convicting proof. State v. Morgan, 929 S.W.2d 380, 383 (Tenn. Crim. App. 1996); State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Moreover, we may not substitute our own “inferences for those drawn by the trier of fact from circumstantial evidence.” Matthews, 805 S.W.2d at 779.

In order to convict the appellant of robbery, the State had to prove that the appellant intentionally or knowingly obtained or exercised control over property from another without the owner’s effective consent by violence or putting the person in fear. Tenn. Code Ann. §§ 39-13-401 & -103. The evidence, in the light most favorable to the State, establishes that after asking the elderly victims for a ride, the appellant directed them to a residence on Bonny Oakes Drive. The appellant then got Mrs. Hatcher out of the car by telling her that a woman inside the residence knew her and wanted to see her. The appellant offered to help Mr. Wood back his car into the driveway. As Mr. Wood was getting out of the car, the appellant slammed the door against Mr. Wood’s leg and jerked him out of the car, knocking him down a hill. When Mr. Wood got up, he saw the appellant take his keys and wallet, containing \$1,000, out of the car. Even though the appellant challenges the testimony of Mr. Wood because of “inconsistencies,” it is well-settled that all questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact, not an appellate court. See State v. Morris, 24 S.W.3d 788, 795 (Tenn. 2000). It is evident from the verdict that the jury accredited the testimony of Mr. Wood rather than the appellant, as to the sequence of events on July 17, 2003. The evidence presented to the jury was sufficient to convict the appellant of robbery. Consequently, the trial court did not err in denying the motion for judgment of acquittal. This issue is without merit.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed.

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JERRY L. SMITH, JUDGE